

**MARCH 2020  
CODINGTON COUNTY/CITY OF WATERTOWN  
JOINT BOARD OF ADJUSTMENT  
CODINGTON COUNTY  
PLANNING COMMISSION/BOARD OF ADJUSTMENT  
STAFF REPORT**

**MONDAY – MARCH 16, 2020 – 12:30 p.m.**

**CODINGTON COUNTY/CITY OF WATERTOWN JOINT BOARD OF ADJUSTMENT**

**ITEM #1 VARIANCE**

**Applicant/Owner: Loren Berg**

**Property Description** Government Lot 1 less Lots H-2 & H-3 & Government Lots 2-3 & SW1/4 of NE1/4 of Section 6-T116N-R53W, Codington County, South Dakota. (Pelican Township)

**Latitude/Longitude:** 44.884585 / -97.228582

**Action Item – Variance – Lot width (3.04.03.2)**

**Zoning Designation:** A – Agricultural District

**Request:** Create a minimum 35 acre lot but less than 1,300' in width.

**History/Issue(s):**

**Specifics of Property/Request:**

1. Mr. Berg owned the entire Section at one point.
  - a. In January 2015, the Board granted this same variance to property fronting 173<sup>rd</sup> Street (SE1/4) with no objection from the County Highway Superintendent and upon agreement to transfer dwelling right from the interior quarter-quarter section.
  - b. This request is to split a portion in the NE1/4 in the same manner.
2. If the applicant were to sell 35 acres with 1,300' in width the water in the northern portion of the lot would make it difficult to access the lot from the east. It is already difficult from the north and west due to the former railroad grade.
3. Mr. Berg does not need to transfer a development right at this time since there are no houses located in this quarter section.
4. This property is on the north side of the crest of a hill and will require specific consideration for access location. (See below)

**Ordinance/Variance History regarding this request:**

1. The zoning ordinance anticipates a (mostly) square 1,300' x 1,300' lot.
2. The ordinance does allow an exception for lots that are 660' in lot width.
3. The County Board of Adjustment has approved variances to this section in similar instances adjacent to county roads and township roads if the road authority did not object to the request.
4. The County Board did require one individual to make both lots 660' wide due to objection by the [township] road authority. (Schmeling 2015)

5. On February 25, 2020 Pelican Township Board met and determined the lot width proposed was acceptable, so they do not object to the dimensions of the lot.
  - a. However, they did want to note the location of this on the in reference to the hill may be an issue for drainage and line of sight. They request the ability to review and determine the appropriate location for an access and culvert when the time comes for installation of access.
  - b. The township has full purview over access of it's streets. This request does not change that, but the county can put the applicant on notice of his obligation to install accesses in accordance with Township (State) rules and policies.

Staff Recommendation:

Staff recommendation – **Lot width less than 1,300 ft-** The Board could postpone, deny or approve the request. Staff recommends that if approved the Board could use the following findings:

- a. Following the required lot width would encourage the applicant to construct a trail through a waterbody to access the back side of the remainder of the lot.
- b. The highway authority does not object to the request.
- c. The variance can be granted but still allowing for each lot to contain at least 35 acres and not exceed the development density already allowed by ordinance provided the applicant acknowledges:
  - i. Only one (1) house may be placed in the SE1/4 of the NE1/4 without obtaining a variance to the number of residences allowed per quarter-quarter section.
  - ii. Access to 449<sup>th</sup> Avenue is allowed only in accordance with access and drainage standards of Pelican Township.

**CODINGTON COUNTY BOARD OF ADJUSTMENT**

**ITEM #1 CONDITIONAL USE PERMIT**

**Applicant: William Scepaniak, Inc. / Property Owner: Modak Dairy Inc.**

**Property Description:** W1/2, NW1/4 less 7 acres, Section 36-T117N-R51 West of the 5<sup>th</sup> P.M., Codington County, South Dakota. (Kranzburg Township)

**Zoning Designation:** A – Agricultural

**Request:** William Scepaniak, Inc requests to operate a gravel pit with rock crusher.

**History/Issue(s):**

Specifics of Request:

1. The applicant has an agreement with Modak Dairy Inc. to mine gravel on the above described parcel.
2. The current proposal is to mine approximately 10 acres, but to leave the permit active if they intend to mine more of the property in the future.
3. All mining activities are proposed greater than 65' from the right-of-way.
4. The property accesses a gravel Kranzburg Township road (171<sup>th</sup> Street). The haul route map provided by Nextera/Crowned Ridge indicates traffic will travel east/west on 171<sup>st</sup> Street and north/south traffic will utilize 463<sup>rd</sup> Ave (County Road) and 466<sup>th</sup> Ave (*shared* Township Road.).

Ordinance and Comprehensive Land Use Plan regarding this request:

1. The Comprehensive Land Use Plan lists considerations for Gravel Pits on page 63.
2. The applicant did not submit some details at the time of this report, so this report is compiled on the basis of past applications for the mining of gravel at other sites associated with this project. Most information not provided is publicly available.
3. No new structures, monitoring wells, or shelterbelts are proposed.
4. The applicant did not provide haul road agreements for this site with Codington County, Kranzburg Township, or Rome Township (Deuel County). In previous instances agreements for construction of wind towers have included maintenance during mining as well. Applicant will be required to demonstrate haul road agreement with applicable road authorities, or documentation by the road authority that such agreement has been made prior to commencement of mining.
5. Reclamation for this project is scheduled to occur upon completion of mining activities, at which time the topsoil will be returned with the intent to use the property for agricultural use/grassland. The topsoil will at that time be seeded with crops or grass.
6. The applicant will have a bond with the state for reclamation of the site. Staff has become aware that counties no longer have the authority to require bonds for reclamation of gravel pits (state law).
7. The gravel pit is greater than 1,000 feet from the nearest off-site residence. The nearest residences are owned by the owner of the property to be mined.
8. All mining is proposed to be greater than 65' from any right of way, including the unimproved 465<sup>th</sup> Avenue right-of-way.
9. Land Use plan states that: "Drainage patterns... require a case by case consideration of stormwater/pollution control measures." AND "Appropriate extraction setbacks will be imposed".
10. With recent permits the Board has specified an amount of acres which may remain unclaimed until completion of the mining. This mine proposes to disturb only 10 acres. It would be appropriate to specify that not more than 10 acres could be left unreclaimed given the plan to not disturb more than 10 acres. ("Reclaim as you go.")

Staff Summary and Recommendation:

Approval of this permit constitutes acknowledgement by the board that the applicant has provided adequate information along with information available to the Board through the zoning office, has provided required information for a permit application and that the applicant proposes to meet specified requirements of the ordinance.

Conditional Use Permit – **Gravel Pits...** The Board may postpone the request, deny the request or approve the request. If approved staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

- 1) Effective Date:
  - a. Signing of the Letter of Assurance
- 2) General Requirements:
  - a. There will be no storage of junk on site.
  - b. A mining permit or proof thereof from the South Dakota Department of Environment and Natural Resources shall be presented to the zoning officer prior to the excavation of material from this property.
  - c. The applicant shall obey any Federal, State and Local law of and obtain any necessary permits from the State of South Dakota. These permits may include but are not limited to Storm water drainage permit, Flood Control Permit, Water Rights Permit, etc.

- d. The site is to be reclaimed according to standards established by the South Dakota Department of Environment and Natural Resources.
- e. Not more than 20 acres shall be mined at any given time. All other property shall remain unmined or reclaimed.
- f. No mining shall occur within 100' of the waterway unless documentation from the corps of engineers indicates such excavation is authorized.
- g. This conditional use permit authorizes the use of this property for crushing of rock and for the applicant to screen materials.

3) Haul Road Agreements:

- a. Applicant shall provide a haul road agreement for the use of 171<sup>st</sup> Street for hauling materials prior to excavation of materials. If no agreement is required by the Kranzburg Township Board, documentation of such decision is required.
- b. Applicant shall provide a haul road agreement for the use of 463<sup>rd</sup> Avenue for hauling materials prior to excavation of materials. If no agreement is required by the Codington County Highway Superintendent, documentation of such decision is required.
- c. Applicant shall provide a haul road agreement for the use of 466<sup>th</sup> Avenue for hauling materials prior to excavation of materials. If no agreement is required by the road authority, documentation of such decision is required.
- d. Grantor shall provide a haul road agreement with the applicable road authority for the use of Kranzburg Avenue or any other roadways/highways (Streets or Avenues) not described herein prior to utilizing that roadway for hauling materials or bringing empty trucks to the site on that roadway.
- e. If it is found trucks using this mine are utilizing any of these roadways prior to the above agreements being filed with the zoning office, all mining activities will be ordered to Cease and Desist until such agreements are filed.
- f. Grantor will be required to control dust generated from operation of the mine and traffic from this mine on the above haul roads.
- g. If complaints are received and substantiated by the zoning office regarding dust generated by operation of the mine and traffic from this mine on the above haul roads the Grantor will be notified and shall implement necessary actions to control dust immediately.
- h. If necessary actions are not take within twenty-four (24) hours of notification of the Grantor by the Zoning Officer, all mining activities will be required to cease and desist until such measures have been taken.

4) Violation and Penalties:

- a. Applicant is put on notice that failure to abide by the requirements of this letter of assurance will result in a hearing of the Board of Adjustment to consider revocation of the conditional use permit associated herewith.

**ISSUE #2 OPEN/ADMINISTRATIVE REPORT**

- With the short turnaround between meetings, staff was unable to prepare draft ordinance language consistent with the February meeting comments by the Planning Commission. Expect a discussion at the April Meeting.
- Staff will update the Board on the status of SB 157.